

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KEVIN GRAHAM	§	
v.	§	CIVIL ACTION NO. 6:07cv28
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Kevin Graham, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his detention. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Graham signed his petition on January 9, 2007. The Magistrate Judge reviewed the petition and the on-line records of the Smith County judiciary and determined that the conviction which Graham was challenging had been handed down on January 5, 2007. The state district court had certified Graham's right of appeal on January 5, but no appeal had been filed as of that date.

On February 6, 2007, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice for failure to exhaust state remedies. The Magistrate Judge also recommended that a certificate of appealability be denied *sua sponte*. Graham received a copy of this Report on February 15, 2007, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED without prejudice for failure to exhaust state remedies. The dismissal of this application shall have no effect upon any pending appeals or habeas petitions which Graham may have in state court, nor upon his right to refile a federal habeas corpus relief once his state remedies have been exhausted, should he not have received the relief he seeks in state court. It is further

ORDERED that the Petitioner Kevin Graham is denied a certificate of appealability *sua sponte* with regard to the present habeas corpus application. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 16th day of April, 2007.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE